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| <u>/David H. Brinkman/</u> | <u>12/18/06</u> |
| David H. Brinkman, Reg. No. 40,532 | Date |

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Erik E. Emstad et al.
Serial No.: 10/726,329
Filed: December 1, 2003
Confirmation No.: 3659
Group Art Unit: 3733
Examiner: Swiger III, James L.
Title: **SPINAL ACCESS INSTRUMENT**
Atty. Docket No.: ZMS-MI18US

Cincinnati, OH

December 18, 2006

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION REQUIREMENT
UNDER 35 U.S.C. § 121**

In response to the Restriction Requirement mailed on November 30, 2006, Applicants hereby provisionally elect claims 1-21 of Group I, with traverse, for prosecution in this application and without prejudice to filing a separate divisional application directed to non-elected claims.

Applicants elect Species A as shown in Figures 1-15. Claims 1-12 and 16-21 read on elected Species A.

Applicants respectfully submit that the outer portal member (118) of Species B (Figs. 16-18) is an alternative embodiment of the outer portal member (18) of Species A (Figs. 1-15). In one embodiment (Species A), the outer portal member (18) includes a single sleeve portion (70) while the outer portal member (118) (Species B) includes a sleeve portion (170) comprising a pair of movable sleeve sections (186, 188). Accordingly, Applicants respectfully submit that independent claims 1 and 2 (from which claims 13-15 depend) are generic claims.

Applicants do not believe that this response requires that any fees be submitted, however, if any fees are deemed necessary, these may be charged to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

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